

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**OUTERLIMITS POWERBOATS, INC.,
Respondent.**

**Docket No. FMCSA-2009-0052¹
(Eastern Service Center)**

ORDER ON BINDING ARBITRATION

1. Background

On November 26, 2008, the Field Administrator for the Eastern Service Center for the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to Respondent, Outerlimits Powerboats, Inc., with a proposed civil penalty of \$9,310 for five alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the NOC charged Respondent with: (a) one alleged violation of 49 CFR 382.115(a), with a proposed civil penalty of \$3,170, for failing to implement an alcohol and/or controlled substances testing program; (b) two alleged violations of 49 CFR 395.3(a)(1), with a proposed civil penalty of \$1,540 for each count, for requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours; and (c) two alleged violations of 49 CFR 395.3(a)(2), with a proposed civil penalty of \$1,530 for each count, for requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 14th hour after coming on duty.

Respondent replied to the NOC on December 29, 2008. In its Reply, Respondent did not contest the violations but requested binding arbitration to dispute the amount of

¹ The prior case number of this matter was RI-2009-0008-US1203.

the penalty. On February 13, 2009, the Field Administrator for the Eastern Service Center stated he did not object to the request. The request is granted.

2. Procedures

The arbitration process will be conducted pursuant to FMCSA's published guidance on this subject.² The parties will work together to select an arbitrator and establish procedures that will govern the binding arbitration. The parties will be contacted by a representative from the Department of Transportation's Center for Alternative Dispute Resolution (CADR), who will answer any questions the parties may have about the process and will assist the parties in choosing an arbitrator.

a. Options in Choosing the Arbitrator

The parties may choose an arbitrator from the following sources:

1. Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration;
2. Uncompensated neutral parties from local communities; or
3. Compensated neutral parties from outside the government, whose costs are to be shared by agreement of the parties.

The selected arbitrator will assist the parties in developing procedures and preparing an Arbitration Agreement.

b. Arbitration Format

Respondent may have attorney or non-attorney representation, or it may appear *pro se*; that is, it may represent itself in the arbitration proceedings. With the consent of

² See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

both parties, the arbitrator may conduct hearings in person or by telephone, video conferencing, or computer.

Each party will present evidence supporting the penalty and terms of payment it considers appropriate. The evidence may not contest whether or not the violation occurred because Respondent has conceded the violation as a condition of arbitration. Neither written submissions nor oral argument may contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the arbitrator, each party will present to the arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty and a proposed payment plan. Before opening the envelopes, the arbitrator will determine the appropriate civil penalty and payment plan based upon the evidence presented during the proceeding. The arbitrator will provide his or her determinations in writing to the parties. The arbitrator will then open the envelopes and select the civil penalty and payment plan that is closer to the arbitrator's determinations. The arbitrator has the discretion to select one party's proposed total civil penalty and the other party's proposed payment plan.

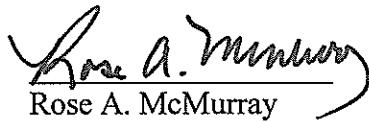
c. Maximum and Minimum Penalty Amounts

The parties may not propose an amount higher than the amount assessed in the NOC. There is no minimum statutory penalty for the violation.

d. Limited Appeals

The arbitration award is binding on the parties. Appeals from arbitration awards are generally limited to fraud or misconduct in the proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 10.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6-3-09
Date

CERTIFICATE OF SERVICE

This is to certify that on this 8 day of June, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Frank Sciacca, Esq.
Counsel for Respondent
Medici & Sciacca, P.C.
1312 Atwood Avenue
Johnston, RI 02919
(401) 946-3910

One Copy
U.S. Mail

Anthony G. Lardieri, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
Eastern Service Center
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061
(443) 703-2248

One Copy
U.S. Mail

Robert W. Miller, Field Administrator
Federal Motor Carrier Safety Administration
Eastern Service Center
802 Cromwell Park Drive, Suite N
Glen Burnie, MD 21061

One Copy
U.S. Mail

Pamela E. Noyes
Rhode Island Division Administrator
Federal Motor Carrier Safety Administration
20 Risho Avenue, Suite E
East Providence, RI 02914

One Copy
U.S. Mail

Fern Feil Kaufman
Counsel for Dispute Resolution
U.S. Department of Transportation
Center for Alternative Dispute Resolution
West Building, Room W96-421
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
(202) 385-CADR

One Copy
Personal Delivery

U.S. Department of Transportation
Docket Operations, M-30
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

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